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CURRENT TOPICS

Landlord and Tenant Bill

THE introduction of the Landlord and Tenant Bill by the Home Secretary on 10th December marks an important date in the history of the complex law of landlord and tenant. The White Paper on "Government Policy on Leasehold Property in England and Wales," published last January, made it known, to those who were not already aware, that the Act of 1927 afforded dubious protection to lessees of business premises who wanted new leases. The new Bill substitutes a simpler and more equitable law and procedure for obtaining new leases of business premises, and also proposes to give security of tenure to occupying tenants under certain leases of residential property at low rents and to occupying sub-tenants under such leases. Although the amendments to the Rent Restrictions Acts rendered necessary by this proper reform may seem simple, experienced practitioners will feel doubts whether, like every other landlord and tenant reform, it will not produce its own crop of problems which will have to be litigated. An article summarising the proposals appears at p. 870, *post*.

Financing of Speculative Transactions

A MEMORANDUM sent early this month by the Governor of the Bank of England to banks, insurance companies and others reminded them of the wish of the Chancellor of the Exchequer that purely speculative transactions should not be financed. It added that some transactions involved in certain kinds of "take-over bid" might come under that heading, including purchases of freeholds coupled with the release of the properties at a rental. It will be the responsibility of the financial institution concerned to determine what is a purely speculative transaction, and it is obvious that this will not be easy. There have been previous similar reminders, in which reference has been made to loans, subscriptions to capital and other forms of financing, but not to the purchase of properties. It does not appear that any recent events on the Stock Exchange have prompted this move. The recent threatened disposal of a world-famous hotel property made some experts wonder whether investment might not be discouraged by such events. The City Editor of the *Daily Mail* stated in the issue of 11th December that it will have to be decided whether a company's assets can be alienated from the control of the ordinary shareholders by the action of the directors without the shareholders' consent, and if so, whether the Companies Act must not be amended immediately. It has since been reported that the Board of Trade are considering whether a loophole has been revealed which may need to be closed by amending legislation.

Clerk Retiring with Justices

ON 4th December, 1953, the day before our leading article on this subject was published at p. 822, *ante*, the Divisional Court refused leave to apply for an order of certiorari on the ground that the conviction of the applicant, Mr. A. J. How, by Dartford justices was bad since, there being no point of

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law involved, the clerk had accompanied the justices when they retired to consider their verdict. The case is now reported at [1953] 1 W.L.R. 1480, and a note of it appears at p. 877 of this issue. The LORD CHIEF JUSTICE, pointing out that the justices had heard this case before the decision in *R.* v. *Barry Justices; ex parte Kashim* [1953] 1 W.L.R. 1320; *ante*, p. 742, and had not, therefore, deliberately flouted that decision, went on to say that it was not to be thought that whenever a clerk retired with the justices the court would quash the conviction. If justices disregarded the directions of the High Court as to their retirement, it would be a ground for complaining to the Lord Chancellor, who would then inquire into the matter. In the present case there were no grounds for quashing the conviction. The only conclusion which we are able to draw from this decision, which does not appear to fall into line with the *Barry* case, is that the *Barry* case opened too widely the door to an appeal, and that the door is now to be at least partly closed.

Reform of Arbitration Law

THE President of the Institute of Arbitrators, Mr. J. R. W. ALEXANDER, C.B.E., is leading a campaign by the Institute for legislation to amend English arbitration law in order to render void a provision in an agreement which makes one of the parties, or the employee or agent of a party, the arbitrator in a dispute arising and referable to arbitration under the agreement. Such a simple enactment, he states, would occupy negligible Parliamentary time since there would be little, if any, opposition. The proposed amendment would enable either party to apply for the appointment of an independent arbitrator. In a statement issued on 1st December, 1953, by the Chartered Institute of Secretaries, Mr. Alexander stated that the settlement of disputes by arbitration was becoming increasingly widespread owing to the advantages which the process afforded over litigation in appropriate cases. It was generally quicker, cheaper and less complicated, besides being private. Privacy and quickness are great advantages, but lawyers with experience of arbitration may well feel doubts as to whether it is less expensive than litigation, while as to its degree of complexity a glance at the current edition of "Russell" should dispel some illusions.

The Rent Acts

THE Inns of Court Conservative and Unionist Society have sent us a copy of a report which they presented to the Minister of Housing some time ago and which they have now had printed. It covers the whole field of the Rent Acts, emphasising the need for their simplification and codification and suggesting desirable reforms. Deploring that laws largely affecting persons in humble circumstances are so complicated, it proposes a new system under which a free market in rented accommodation may be achieved as soon as the demand is broadly balanced by the supply. By repealing the provisions of the Landlord and Tenant (Rent Control) Act, 1949, which give rent tribunals power to alter the standard rent of houses first let after 1939, it states, a more nearly free market would be introduced in houses which are being let for the first time. This, according to the report, would also give an indication of the true state of the market, so as to make it easier for the Government to judge when the appropriate moment to introduce a more general decontrol had arrived. It also proposes that when a landlord comes into possession of the whole of a dwelling-house that fact should operate to decontrol the house, as happened also under the 1923 Act. This will also be a valuable guide to the state of the market. The jurisdiction given to rent tribunals with regard to furnished lettings receives sharp criticism. The restrictions sometimes placed on examination and cross-examination, the admission of hearsay evidence, the political flavour of some tribunals and the absence of a right of appeal, lead the society to the conclusion that the tribunals' jurisdiction should be transferred to the county courts, assisted if necessary by surveyors as assessors. An alternative suggested is that the tribunals should be bound by the normal rules of evidence and procedure, that one member at least should be a qualified lawyer, and that a right of appeal should be given. A recommendation that rents of controlled houses should be allowed to rise by a sum equal to twice the statutory deductions for determining rateable value is frankly borrowed from a scheme on similar lines put forward by the Royal Institute of Chartered Surveyors and now elaborated in the Housing Repairs and Rents Bill at present before Parliament. The report also contains an instructive summary of the Acts, and a clear account of the anomalies resulting from them.

Typing Errors

To the typist who never makes a mistake in her work we take off our hats and acknowledge our gratitude. Sometimes we are grateful in a different way for some of the diversion provided by the other kind. Was it, for example, inexperience or mature knowledge that produced the version "Petition for Disillusion of Marriage" in instructions to counsel? Sometimes the suspicion that the mistake is deliberate becomes very strong, as where in a proof a witness is reported as saying that the respondent wife began to step out late at nights. And can a typist who named a district in London "So-ho" have been an academic historian who insisted on reminding the reader that Soho was once a happier hunting ground than it is to-day? These are actual instances of mistakes that have provided lawyers with light relief in their solemn work. The greater part, however, of the product of law typists shows a surprising degree of skill and accuracy, having regard to the abundance of difficult and polysyllabic technical terms with which they must become familiar. The rapidity of modern typing enables much greater quantities of correspondence and legal documents to be produced than in the old days of the scriveners. The perfection of the ancient craft of handwriting is gone, and in these days of mass production one must be thankful for the small mercies of occasional and pardonable errors.

Tax Evasion Statistics

THE Revenue Department's Appropriation Accounts for 1952–53, which were presented to Parliament on 8th December, show that for the year ended 31st March, 1953, investigations into under-assessments due to fraud and evasion of income tax and profits tax resulted in 9,836 pecuniary settlements for a total of £11,045,412. Penalties amounted to £3,865,219. The special branch investigating important cases of fraud dealt with 262 cases, totalling £2,751,108, which were settled. Local inspectors settled back duty liabilities of small traders and others numbering 5,955, and amounting to a total of £2,123,194. The number of settlements in the previous year was 4,962, the total was £9,430,396, and £2,446,205 was imposed in penalties. For the two years ended 5th April, 1952, 1,200,000 notifications from banks and savings banks were received under the powers given by the Finance Act, 1951. These included 600,000 notifications from the Post Office Savings Bank in respect of interest exceeding £15 a year. 330,000 cases of under-assessment or non-assessment were revealed. Of these, 139,000, amounting to about £7,000,000, were settled in the year under survey.

Taxation

A MODERN FRAUD PROBLEM

IT is clear that if the exercise of a power results in nothing but gain to the objects of the power and results in no gain at all to the appointor then there can be no fraud. It is equally clear that if it confers a benefit on the appointor at the expense of the objects then there is a fraud and the purported exercise is void and of no effect. But there is a midway position where the exercise results in gain both to the objects and to the appointor: such cases have been recognised at least as early as *McQueen* v. *Farquhar* (1805), 11 Ves. 467, and were considered in *Cockcroft* v. *Sutcliffe* (1856), 25 L.J. Ch. 313. If it is held that such an exercise of a power is fraudulent and void then, in the words of Lord Romilly, M.R., in *Re Huish's Charity* (1870), L.R. 10 Eq. 5, at p. 9, "... it would be to strain a rule intended for the purposes of benefiting the objects of a power to a rigid exactness which inflicts a plain and manifest injury upon them."

Although this is so old a problem yet it is constantly recurring to-day in a somewhat acute form. Suppose property to the value of £20,000 to be settled upon *X* for life, remainder to such one or more of *A*, *B*, *C* and *D* as *X* may appoint, remainder in default of appointment to *Y*. *X* is aged about seventy years and has free estate of about £100,000. If X appoints to the four objects in equal shares, does nothing more and in the course of time dies, each of the objects will take, on his death, after the Crown has exacted its half-share, the sum of £2,500. If *X*, being generous and desiring above all things to benefit the objects of the power, decides to release his life interest to them as a free gift, then again, unless he survives for five years thereafter, they will take £2,500 each. To increase the fund available for the objects it is necessary that *X*, instead of giving away his life interest, should purchase from the objects their reversions expectant on his own death. If he is of advanced age the price he will pay for them will approach the total value of the settled funds so that the objects will be left each with a sum much nearer £5,000 than £2,500 and *X*, incidentally, will be left with a capital sum rather than a life interest.

It is so clearly to everyone's benefit that *X* should pursue such a course that it is necessary to know how far he may do so without running foul of the rule against frauds upon a power.

Release of the Power

It is a well-known curiosity of Equity that the rule against fraud on a power has no application to the release of a power. See *Re Somes* [1896] 1 Ch. 250. Hence it is sometimes, but not always, possible to achieve the required end by releasing the power. In the hypothetical case mentioned above it is not possible so to proceed because the only effect of release would be to take the property away from the objects entirely; where, however, the property in default of appointment passes to the objects in equal shares it is often possible to proceed by release. But it will not be so if there is some possibility of an accretion to the class of objects. Another example of a case in which release of the power would not suffice was *Re Merton; Public Trustee* v. *Wilson* [1953] 1 W.L.R. 1096; *ante*, p. 572: there there were three objects of a power of whom one was under a disability. The appointor, who was also life-tenant of the fund, had already amply provided for him and had executed a will exercising the power in favour of the other two objects in equal shares. In such a case, if it is possible to make a valid irrevocable appointment by deed to the two objects not under a disability, following it by a purchase from them of their reversionary interests, the whole of the fund will be saved from estate duty: if it is necessary to proceed by release only two-thirds of the fund can be so protected because the object who is under a disability is unable to conclude a valid sale of his reversion. Whether his committee or receiver might do so on his behalf is another question; in *Re Merton* it was in any case not desired to benefit him because he was already provided for apart from the settled funds.

Another case in which it was found impossible to proceed by way of release is the recent one of *Re Greaves; Public Trustee* v. *Ash* [1953] 3 W.L.R. 987; *ante*, p. 832, but there the difficulty was of another sort entirely. In that case all the children were *sui juris* but the appointor had by deed revocably exercised the power. It was proposed that she should execute a deed revoking the first, following it with a deed releasing the power and following that in its turn with a purchase from the objects of their reversionary interests. Vaisey, J., following *Re Jones' Settlement* [1915] 1 Ch. 373, held that whilst the release of a power is not within the doctrine of fraud yet the revocation of an appointment is within that doctrine. Hence it had to be decided whether in the circumstances the purported revocation was a fraud before it was possible to proceed by way of release.

In this regard *Re Greaves* points a certain moral. If there is a power exercisable by will or by deed revocable or irrevocable then, if it is desired that the appointor should retain a *locus pœnitentiæ*, the power should be provisionally exercised by will and not by deed. One can hardly say that the revocation of the will is affected by the doctrine of fraud because, a will being ambulatory, one cannot say that the appointment is exercised until the death. On the other hand a power to appoint by will only is embarrassing when it is desired to protect the objects from the inroads of estate duty.

Fraud or No Fraud?

Where for one reason or another it is not possible to proceed by way of release one is compelled to consider whether the appointment or, in the rarer cases like *Re Greaves*, whether the revocation of an existing appointment is good or bad. The difficulty which this occasions is well illustrated in the contrast between that case and the slightly earlier case of *Re Merton*. In that earlier case it will be recalled that the appointor had at an earlier period exercised the appointment by will in favour of those objects who were *sui juris*. On the estate duty position being drawn to her notice she supplanted this by an irrevocable appointment by deed in similar terms. A short time thereafter she offered to purchase the reversionary interests, making it clear that the objects were under no obligation to accept the offer but might, instead, rest on the irrevocable appointment in their favour. Wynn Parry, J., considered and discussed *Vatcher* v. *Paull* [1915] A.C. 372 and certain other authorities, and concluded that the court had to inquire whether the appointor's intention was to secure a benefit for himself or some other person not an object of the trust. If it was, then the appointment was bad, if it was not, then the appointment was good. Applying this test to the facts before him the learned judge came to the conclusion that the appointment "was effective to pass the whole of the interests in the fund to the two daughters, and was effective by the subsequent step to vest the whole of the interest in the fund in the mother."

When it had been established that the revocation had to be examined as though it were an appointment the facts in

Re Greaves differed in only one essential particular from those in *Re Merton*. In *Re Merton* the irrevocable appointment had been made some little time before the offer was made to the objects to purchase their reversions: whether or not the objects "knew what was in the wind" long before that offer was made does not appear. In *Re Greaves* it seems that the appointor and the objects had agreed upon a scheme in the first place and the deed of revocation was made in the light of that fact. Vaisey, J., considered *Vatcher* v. *Paull* and also the earlier case of *Portland* v. *Topham* (1864), 11 H.L. Cas. 32. The learned judge was very much impressed by the fact that, as a result of a preconcerted scheme, the appointor was going to put herself in possession of a large capital fund in exchange for her life interest, and he held that although the scheme might well be regarded as a meritorious one the very fact that it was beneficial to all parties, non-objects as well as objects, including the appointor herself, made it impossible for him to say that it did not contravene the doctrine of fraud. The learned judge was referred to *Re Huish's Charity* and to *Re Merton*, but distinguished the latter in that there the appointment and the scheme were separate and distinct and not part of the same transaction.

From this it is clear that if the appointment is to be valid it must be made prior to and independently of any agreement that there should be a sale and purchase of the reversions. One cannot help thinking that such a distinction has an air of unreality. If the parties agree the whole course of conduct before the appointment then that appointment is void: if the appointment is made irrevocably and afterwards the appointor offers to buy the reversions at an actuarial value all is well, although the appointor and everyone else knew at the time of the appointment that, once it was made, such an offer, having regard to the incidence of estate duty, must as a certainty be accepted by any object who had not taken leave of his senses.

There must, of course, be cases where an appointment followed by a sale and purchase of the reversion is clearly fraudulent; it would be so if there was an agreement between the donee of the power and one of the objects that the donee would appoint to that object to the exclusion of the others if he would sell his reversion to the appointor at something less than its actuarial value. But these cases, which are little short of fraudulent in the common-law sense, as well as such meritorious schemes as were found in the two recent cases, would all be met if it were possible to adopt the test laid down by Lord Romilly, M.R., in *Re Huish's Charity*, at pp. 9–10: "... if the appointor, either directly or indirectly, obtain any exclusive advantage to himself, and that to obtain this advantage is the object and the reason of its being made, then that appointment is bad; but if the whole transaction taken together shows no such object, but only shows an intention to improve the whole subject-matter of the appointment for the benefit of all the objects of the power, then the exercise of the power is not fraudulent or void, although by the force of circumstances such improvement cannot be bestowed on the property which is the subject of the appointment without the appointor to some extent participating therein."

It cannot be denied that this is a more meritorious test than that which Vaisey, J., felt himself bound to adopt in *Re Greaves*. It is, indeed, in Lord Romilly's words, "inflicting plain and manifest injury" upon the objects that they must be debarred from the benefit of having the fund released from the claims of the Estate Duty Office because, by reason of the Finance Act, 1940, s. 43, as amended by the Finance Act, 1950, s. 43, it is essential to put a little money into the pocket of the appointor.

G. B. G.

Landlord and Tenant Notebook

THE LANDLORD AND TENANT BILL

THE habit indulged in by some readers of detective stories of reading the last chapter first may or may not be a bad one, but in the case of the Landlord and Tenant Bill it may be to the practitioner's advantage to glance at the concluding clause, the intended future s. 66, first; in particular the words "... and the Landlord and Tenant Act, 1927, and this Act may be cited together as the Landlord and Tenant Acts, 1927 and 1953." This brings home to us the fact that more than some piece of temporary legislation is contemplated.

Part I of the Bill, it may be said, is not designed to effect so permanent a change as are Pts. II–IV; it replaces those provisions of the Leasehold Property (Temporary Provisions) Act, 1951, which conferred a measure of Rent Act protection on some tenants (and the families and sub-tenants of such) who were excluded from that protection by reason of s. 12 (7) of the Increase of Rent, etc., Restrictions Act, 1920, i.e., when their rent was less than two-thirds of the rateable value of the house. It was the decision in *Knightsbridge Estates, Ltd.* v. *Deeley* [1950] 2 K.B. 228 (C.A.) (in which a sub-tenant was concerned) which was the immediate occasion of the passing of the 1951 Act and the new measure, like that Act, proposes to extend protection when there is a "long tenancy" at a "low rent": a long tenancy being a tenancy granted for a term of years certain *exceeding* twenty-one years (or, in certain cases, a periodic tenancy following such a term) and a tenancy at a low rent meaning one at a rent which is less than two-thirds of the rateable value of the property comprised in the tenancy. A cynic might observe that the Legislature is at last about to take note of a remark made by Scrutton, L.J., when examining the effect of s. 12 (7) in *Mackworth* v. *Hellard* [1921] 2 K.B. 755: "Having heard a number of cases on this Act, I do not think that Parliament very carefully thought out the consequences which would follow from these provisions."

The method by which protection is conferred differs slightly from the normal Rent Act method, which is simply to deprive landlords of their remedies rather than their rights. Before the "statutory tenancy" stage is reached, the position is that the tenancy continues automatically on the same terms as before; but the landlord may give the tenant a six months' notice to elect whether he will give up possession, which must either contain proposals for "a" statutory tenancy or notify intention to claim possession under the new Act. For a statutory tenancy is not to be such a tenancy as comes into being as the result of retaining possession under the Rent Acts ("... observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy etc.": 1920 Act, s. 15 (1)). The parties may agree, or failing agreement may submit to the court, the question of the amount of the standard rent and all other terms, and a good deal of the Bill is devoted to the question of agreement on or determination of what "initial repairs" are to be carried out and at whose expense, having regard to who is to blame for any disrepair.

If the landlord desires to claim possession, substantially the usual "Rent Act" grounds will be available to him, and

one additional ground: that for purposes of redevelopment after the termination of the tenancy he proposes to demolish or reconstruct the whole or a substantial part of the premises.

The above is an outline of what we rather expected; less expected are some of the proposals affecting security of tenure for business, professional and other tenants to be found in Pt. II, under which a landlord may possibly be ordered to execute or make in favour of the tenant a lease for as long as fourteen years, regardless of any adherent goodwill, etc. The provisions are to apply to "any tenancy where the property comprised in the tenancy is *or includes* premises which are occupied by the tenant and are so occupied wholly or partly for the purposes of a business carried on by him", and "business" includes a trade, profession or employment *and* includes any activity carried on by a body of persons, whether corporate or unincorporate. The scope is, therefore, intended to be wider than that of Pt. II of the Landlord and Tenant Act, 1927, or that of Pt. II of the Leasehold Property (Temporary Provisions) Act, 1951 ("shops"), though a number of exclusions are provided for: these affect agricultural holdings, mining leases, the business of sub-letting, controlled premises, licensed premises. The *modus operandi* is roughly as follows: the tenancy will continue unless the tenant has given notice to quit or has surrendered it or it has been destroyed by forfeiture. The landlord may then give notice to terminate (minimum length, six months) stating whether he would oppose an application for the grant of a new tenancy; while, in the case of fixed terms exceeding one year, the tenant may start the ball rolling by making a "request" for a new tenancy to begin not less than six months from its date, to which the landlord may, within two months, react by notifying intention to oppose any application to the court. The grounds on which an application may be opposed are numerous and elaborate: failure to observe obligations to repair during the current tenancy, persistent unpunctuality in the matter of rent, missing a reasonable opportunity afforded by an option, suitable alternative accommodation offered, plus such grounds as the landlord's intention to demolish or to occupy for business purposes; but, if opposition fails, and no agreement is reached, there is to be "such a tenancy as may be determined by the court to be reasonable in all the circumstances" and not exceeding fourteen years in duration. Also, compensation in lieu of a new tenancy may be ordered, *inter alia*, if the landlord succeeds on the intended demolition or intended own occupation grounds; when the tenant can show that he or his predecessor carried on the business on the premises for fourteen years preceding the determination, the amount is to be twice the rateable value of the premises; in other cases, the rateable value (which may have to be apportioned by a valuation officer!).

Part III proposes changes in the law relating to compensation for improvements, shortening the periods for notifying claims prescribed by the Landlord and Tenant Act, 1927, s. 1 (1), abolishing the exclusion of improvements made pursuant to statutory obligation or made more than three years before the term ends, and restricting contracting out.

In Pt. IV a variety of changes is proposed. The scope of the Leasehold Property (Repairs) Act, 1938—a measure which, as some will remember, was enacted in order to give some protection to the "little man" confronted with an unexpectedly exacting schedule of dilapidations and threatened with forfeiture—is to be enlarged so as to apply to a lease for as little as seven years, to any property other than property comprised in an agricultural holding, rateable value no longer to matter; the Law of Property Act, 1925, s. 84 (12), provisions for discharging or modifying obsolete restrictive covenants are to apply to forty-year terms with twenty-five years unexpired (the present minima are seventy and fifty). An action for a declaration that consent to alienation, to improvements or to change of use has been unreasonably refused, is to be made triable in county courts regardless of the value of the property, nor need the remedy be sought as ancillary relief. And something is to be done to assist the landlord who cannot serve notice to quit because premises are unoccupied; in my respectful submission, the present proposal (cl. 52) does not really go far enough as it appears to assume that once premises are occupied notice can always be effectively served on the occupant(s). (See 95 SOL. J. 117; 96 SOL. J. 290.) There are also some proposals to extend special privileges to Government departments and local authorities in the matter of terminating tenancies protected by Pt. II, and further proposals dealing with the jurisdictions of county court and High Court in disputes arising under Pts. I and II.

The above is a mere outline of a Bill which, I think it can be said, is likely to be the subject of a good many proposals for amendments before the assent stage is reached.

R. B.

HERE AND THERE

PREHISTORY AGAIN

THE mystery of the "Piltdown Man", and of the enigmatic part, whether active or passive, played by the respectable country solicitor who was his sponsor in the best scientific society, seems to have receded unsolved. Meanwhile, scientific men have been much preoccupied to save their faces by publicising the doubts they have suddenly discovered they always felt about the true nature of the remains. It will be interesting to see whether the Sussex licensing justices will now express any distaste for the sign of the local inn, "The Piltdown Man," complete with a representation of the skull, and will attempt to restore the local inn to its original sign "The Lamb." Just a little more ingenuity in excavation and we might have a "Piltdown Lamb" incorporating the fossilised jawbone of a goat. But it is not in England alone that prehistory has been producing problems for legal minds. At Cahors, in Périgord, recently, the court listened to the shocking case of the mammoth's tail. For 30,000 years the mammoth had been dead, but art is longer than life, and all that time its portrait had been preserved, painted on the wall of a cave at Pech Merle. The Gauls and the Romans had come and gone, Vercingetorix and Julius Caesar, the cathedrals, the abbeys, the Crusaders, the heretics and the religious wars, the German invasion and the Maquis. The painting survived the lot. Last of all came a poet called André Breton, known as "the Pope of Surrealism." He came to the cave; he stretched out his hand; he touched the wall and he smudged out an inch of the mammoth's tail. When taxed with the damage he suggested that the tail was not authentic and had been restored. In due course he found himself in court at Cahors charged with doing wilful damage to the mural. His counsel, no doubt in order to evoke an atmosphere in which a little touching up would be all part of the day's work for the owners of the cave, made merry about guides' patter, the box for tips, the drinking bar, the public conveniences and the light canned music outside, but he did not succeed in saving the day for his client. With that mingling of the civil and criminal jurisdictions which seems so odd to us and so obvious to the French, Breton was ordered to pay the equivalent of £5,000 as a fine and £25 damages. The Ministry

of Fine Arts was also a party and was awarded a small nominal sum of damages. The matter was obviously one of some delicacy, and the court had reserved judgment for a fortnight, but what are fourteen days to 30,000 years? The sad thing is that no amount of plastic surgery will now make the mammoth's tail anything but a sham.

NO CHURCH ORIGIN

In every description one finds one has forgotten something that one ought to have put in, and I see that in my notes on the Scottish courts the other day there were some omissions, one of which may as well be remedied. The judges' robes in the Court of Justiciary bear, of course, the same red crosses down the front as their robes in the Inner and Outer Houses. In case anyone starts spinning some theory attributing an ecclesiastical significance to them, it may be well to say that apparently the best opinion as to their origin is that they are the formalised remains of the bows of the ribbons with which the judges originally fastened their robes. For some reason or other, people are constantly straining to find an ecclesiastical pedigree for legal trappings and ceremonies. In this connection I am reminded of an authentic story I heard not long ago, but since it belongs to a period (shall we say?) within the last half-century, it is perhaps proper to mention no names and to cast it into the form of a fable. Here it is, then. There was once a High Court judge of strong personality, great learning and wide knowledge of many subjects, who had been invited for the first time to the City of London banquet, at which Cabinet Ministers, legal luminaries, bishops and other eminent persons attend in the full splendour of their professional and public habiliments as the guests of the Lord Mayor. While he was waiting in the ante-chamber for the moment when the guests are individually announced, he was approached by a gentleman in one of the numerous varieties of clerical attire, who engaged him in conversation, propounding a theory of the derivation of judicial robes from ecclesiastical robes. The judge, who was not much of a churchgoer, assumed that his interlocutor was some City functionary of the rank, perhaps, of Lord Mayor's Chaplain, and having satisfied himself first that the theory advanced was unsound, and secondly that the clerical gentleman appeared to have no accurate knowledge of judicial robes, and, indeed, to be somewhat hazy about the history and significance of robes in general, he proceeded, by a courteous but coldly analytical cross-examination succeeded by a brief summing-up, to put his propositions in their true perspective. This intellectual exercise profitably filled in the period of waiting and, by the time it was concluded, the time had arrived for the formal announcements and judge and cleric separated. When the clerical gentleman, hitherto anonymous, was introduced with all the ceremonial proper to the occasion, the learned judge was interested and surprised to hear him announced as His Grace the Archbishop of Canterbury. Moral: Go to Church service oftener.

RICHARD ROE.

BOOKS RECEIVED

The Taxation of Gifts and Settlements by Stamp Duty, Estate Duty, Income Tax and Sur-tax. By G. S. A. WHEATCROFT, M.A. (Oxon), a Master of the Supreme Court (Chancery Division). 1953. pp. xxviii and (with Index) 178. London: Sir Isaac Pitman & Sons, Ltd. £2 2s. net.

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Clerk & Lindsell on the Law of Torts. Sixth Cumulative Supplement (31st August, 1953) to the Tenth Edition. By CONRAD DEHN, M.A. (Oxon), of Gray's Inn and the South-Eastern Circuit, Barrister-at-Law. 1953. London: Sweet and Maxwell, Ltd. 6s. net.

Income Tax Principles. By H. A. R. J. WILSON, F.C.A., F.S.A.A. 1953. pp. ix and (with Index) 157. London: H. F. L. (Publishers), Ltd. 12s. 6d. net.

The Solicitors' Diary, 1954. 110th Year of Publication. Edited by EDWARD B. GILLHESPY, M.A. (Oxon), Solicitor. 1953. pp. xxxvi and 1082. London: Waterlow & Sons, Ltd. No. 1, £1 11s. (1 day on a page, Half Bound Leather); No. 2, £1 9s. 6d. (2 days on a page, Half Bound Leather); No. 3, £1 1s. (3 days on a page, Cloth Gilt).

Carter's Income Tax, Sur-Tax and Profits Tax. Fifth Edition. By G. W. MURPHY, B.A. (Com.), F.C.A., and F. A. BAILEY, A.C.A. 1953. pp. (with Index) 216. London: Gee & Co. (Publishers), Ltd. 15s. net.

The Law and Practice Relating to Exempt Private Companies. By A. J. BALCOMBE, M.A., of Lincoln's Inn, Barrister-at-Law. 1953. xiii and (with Index) 147. London: Jordan & Sons, Ltd. 15s. net.

Criminal Law. The General Part. By GLANVILLE L. WILLIAMS, LL.D. (Cantab.), of the Middle Temple, Barrister-at-Law. 1953. pp. xliv and (with Index) 736. London: Stevens & Sons, Ltd. £3 3s. net.

Whitaker's Almanack, 1954. 1953. pp. 1190 and xxv. London: J. Whitaker & Sons, Ltd. Complete Edition (1,190 pp., cloth boards) 15s. net., Shorter Edition (694 pp., paper bound) 7s. 6d. net.; and Library Edition (bound in leather and with coloured maps). £1 10s. net.

The Law of Wills. "This is the Law" Series. Third Edition. By RUPERT CROSS, M.A., B.C.L., Solicitor. 1953. pp. vii and 94. London: Stevens and Sons, Ltd. 6s. net.

A.B.C. Guide to the Practice of the Supreme Court. Thirty-Seventh Edition. By D. BOLAND, M.B.E., Clerk of the Lists, Queen's Bench Division. 1953. pp. 395. London: Sweet and Maxwell, Ltd. £1 10s. net.

REVIEWS

University of London Legal Series—I: Public Policy. By DENNIS LLOYD, M.A., LL.B., of the Inner Temple, Barrister-at-Law, Reader in English Law in the University of London. 1953. London: University of London, The Athlone Press. 18s. net.

This is the first volume of a new series of legal monographs to be issued from London University's own publishing organisation, the Athlone Press, under the auspices of the Institute of Advanced Legal Studies. This and a companion volume published simultaneously are well got up and refreshingly moderate in price.

Mr. Lloyd has taken a subject of great practical and theoretical interest. Perhaps because he has set out to make a comparative study, his preoccupation is with the purely scientific approach, a fact which may disappoint any practitioner who looks for detailed guidance in day-to-day matters. But no lawyer worth the name will admit indifference to the nature of the judicial process, and it is into the category of discussions centring on that vexed topic that a large part of Mr. Lloyd's text falls. It seemed to us at first to be an act of self-denial that he should have restricted the scope of his study so that contract and private international law are covered to the virtual exclusion of tort, real property law and divorce. There would be so much to discuss, we should have thought, in *Smith* v. *Selwyn*, the perpetuity rule and "discretion" cases. But the preface makes it clear that this limitation of range is deliberately imposed and we do not wish to do the author the injustice of criticising his book for not being something which he never intended it to be. Within his brief, the argument is convincing and concise, and well

supports his conclusion that a close similarity is revealed between the French doctrine of public order and good morals and the English cases where public policy is an avowed element in the decision.

University of London Legal Series—II: Status in the Common Law. By R. H. GRAVESON, Professor of Law and Dean of the Faculty of Laws in the University of London. 1953. London: University of London, The Athlone Press. 18s. net.

Professor Graveson tells us in the Preface that he wrote this essay before the Second World War and that he had kept it in hiding in the hope that some more profound and comprehensive treatise would in the meantime have appeared. He now offers it as a starting point for further investigation into the general nature of status. The subject is certainly, according to Austin, the most difficult problem in the whole science of jurisprudence. But difficulty does not usually deter academic lawyers from discussion, nor keep them out of print.

For our part we see no cause for the author's modesty. After an expository introduction contributed by Dean Pound, to whom the work is dedicated, the book first deals with the meaning of status, distinguishing its significance in international or constitutional law from its place as part of the common law of the English-speaking countries with which the author is particularly concerned. Then the subject is approached historically; its losing battle in significance for progressive societies against the system of contract is described; its treatment in case law is considered first analytically and then by representative example; and in the last two chapters its nature and functions are summed up. The general legal reader will find this essay much more than a starting point. He will recognise the practical bearing of such topics as incorporation, marriage and legitimacy, subjects in which theoretical considerations are particularly likely to be prominent in the cases actually falling within his experience.

The value of a monograph of this kind, so far as the practising solicitor is concerned, is that its perusal will fill out some of the detail lacking in the standard textbooks when, as so often, a practical problem impinges on more than one of the conventional divisions of the law. As an example we may cite the reference on p. 43 to *Knightsbridge Estates Trust, Ltd.* v. *Byrne* [1938] 4 All E.R. 618, in the Court of Appeal, a decision which hovers between the principles of contract and the law of mortgages until its true essence is crystallised by a commentator untrammelled by the necessity of assigning it to one or other department of legal science.

Road Haulage Licensing. By T. D. CORPE, O.B.E., Solicitor of the Supreme Court. 1953. London: Sweet and Maxwell, Ltd. £1 15s. net.

The purpose of this book is to bring up to date Sturge and Corpe's "Road Haulage Law and Compensation." The subject has had a chequered history, commencing with the Road and Rail Traffic Act, 1933. The Transport Act, 1947, nationalised the industry, which has now been denationalised by the Transport Act, 1953. The book consists of four parts, dealing respectively with the Road and Rail Traffic Act, 1933 (as amended), the Licensing Provisions of the Transport Act, 1947 (as amended), the Licensing Provisions of the Transport Act, 1953, and Licensing Principles. The appendices comprise (1) the relevant sections of the 1933 Act with the text of the regulations thereunder; (2) the relevant sections of the 1947 Act with the text of the regulations thereunder; (3) the Transport Act, 1953; and (4) suggested forms. This well-produced volume may properly be described as self-contained, as it appears to provide a complete statement of a specialised branch of the law. The book should commend itself to practitioners interested in a rapidly expanding industry.

The Transport Act, 1953. By DAVID KARMEL, Q.C., Recorder of Wigan; and KENNETH POTTER, M.A., of the Middle Temple, Barrister-at-Law. Reprinted from Butterworth's Annotated Legislation Service. 1953. London: Butterworth & Co. (Publishers), Ltd. £1 7s. 6d. net.

This reprint from Butterworth's Annotated Legislation Service follows the general plan of the earlier work on the Transport Act, 1947. The introduction occupies thirty pages, and explains the effect of the Act in a lucid and comprehensive manner. The main part of the book comprises the text of the Act, annotated section by section, with copious notes and cross references. There have been few legal decisions on the subject, and there is no Table of Cases. There are five Appendices, dealing respectively with (1) The British Transport Commission Executive and Consultative Committees; (2) Road Haulage Licensing; (3) Road Service Licensing; (4) The Commission's Transport Charges and the Transport Tribunal; (5) The British Transport Commission (Compensation to Employees) Regulations, 1953. This handy volume is intended to be self-contained, so that readers will have no need to refer to other books and documents. In view of the vast amount of information provided, in a clear and readable form, the above object appears to have been achieved.

Law Without Gravity. By J. P. C. Illustrated by LESLIE STARKE. 1953. Chichester: Justice of the Peace, Ltd. 7s. 6d. net.

Misleading attempts to explain just why one did or did not find a book funny are best left alone, and that is the main difficulty about reviewing a humorous work. One can only tell the reader the sort of thing he will find and leave him to try or not to try for himself. This is a collection of casual verse on legal topics, all with comic intent. There are epigrams of a couple of lines and narratives of several pages. This reviewer is bound to report that he found it possible not to smile at them very much, but others may well differ. Clearly, the author has extensive practical experience of the workings of the courts, and that is a very strong point, for his satire rings true. But his garden of verses would be a lot better for a little more of the allied processes of thinning out and trimming and tying up.

Your Legal Adviser. An Explanation of the Law on Everyday Problems. By A SOLICITOR. 1953. London: Augustine Press. 10s. 6d. net.

We do not imagine that any reader of this journal will wish to buy for his own purposes this excellently detailed layman's guide, but if there are solicitors who make a habit of recommending reading of this sort to certain selected clients, they could hardly do better than to bear in mind the claims of this publication.

The author remains, of course, anonymous, but an enthusiastic foreword by Mr. Glenn Craske is a powerful recommendation.

Mr. JOHN ASHBURN, solicitor, of Bolton, has been appointed to the part-time post of clerk to the Bolton borough magistrates.

The Queen has been pleased to appoint Mr. ARCHIBALD WILLIAM COCKBURN, Q.C., to be Chairman of the Court of Quarter Sessions for the County of London on 1st January, 1954, in succession to Mr. E. A. Hawke.

Mr. CHARLES HENRY CHARLESWORTH, solicitor, of Leeds, who has been clerk to the magistrates' court at Settle for twenty years, has been appointed clerk to the Otley bench.

The Queen has been pleased to appoint Mr. RICHARD FRANCIS LEVY, Q.C., to be Recorder of the Borough of Margate as from 11th December.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

DEATH DUTY: TRUST ESTATE: WHETHER DONOR EXCLUDED FROM ANY "BENEFIT"

Oakes *v.* Commissioner of Stamp Duties of New South Wales

Lord Porter, Lord Morton of Henryton, Lord Reid, Lord Tucker and Lord Asquith of Bishopstone. 3rd December, 1953

Appeal from the High Court of Australia.

The testator, who owned a grazing property in New South Wales, executed a deed poll under which, as from 1st July, 1924, he held the property upon trust for himself and his four children as tenants in common in equal shares. The deed gave him wide powers of management, and in particular provided that, in addition to reimbursing himself all expenses incurred in the administration of the trust, he was entitled to remuneration for all work done by him in managing the trust property, on which he resided with his family in his capacity as trustee and manager, in the same manner and as fully in all respects as if he were not a trustee thereof. The testator continued to manage the trust property until his death, receiving certain varying sums annually as remuneration, and after deducting those and other outgoings and expenses he divided the profits from the property into five equal shares, crediting one share to himself and one share to each of his children. The children's shares he applied during their minority for their maintenance and education, and paid them to the children when they came of age. On the death of the testator in 1947 the question arose whether the value of the whole of the trust property, or only one-fifth thereof, was to be included in his estate for the purposes of death duty under s. 102 (2) (*d*) of the New South Wales Stamp Duties Acts, 1920–40 (which was not for the purposes of this case materially different from s. 43 (2) (*a*) of the United Kingdom Finance Act, 1940), which provided that for the purposes of death duty the estate of a deceased person should be deemed to include "any property comprised in any gift made by the deceased at any time, whether before or after the passing of this Act, of which *bona fide* possession and enjoyment has not been assumed by the donee immediately upon the gift and thenceforth retained to the entire exclusion of the deceased, or of any benefit to him of whatsoever kind. . . ." The Supreme Court of New South Wales held that the whole of the trust property was subject to duty, and their decision was affirmed by the High Court of Australia by a majority of three to two. The appellant, the executor of the will of the deceased trustee, now appealed.

LORD REID, giving the judgment of the Board, said that it was not sufficient to bring a case within the scope of the section to take the situation as a whole and find that the settlor had continued to enjoy substantial advantages which had some relation to the settled property; it was necessary to consider the nature and source of each of those advantages and determine whether or not it was a benefit of such a kind as to come within the scope of the section (*St. Aubyn* v. *Attorney-General* [1952] A.C. 15). The property being held in trust for the children, the testator's possession as trustee was their possession for the purpose of the exclusion of the property under the section, and it mattered not that the trustee was the donor himself. The donor was entirely excluded if he only held the property in a fiduciary capacity and dealt with it in accordance with his fiduciary duty. And even assuming that, in the application of the children's income from the trust for their maintenance and education before they came of age, there was some advantage to the testator, that advantage was not at the expense of the children and did not impair or diminish the value of the gift to them or their enjoyment of it. Any such advantage was not a benefit to the testator within the meaning of the section; it neither encumbered the enjoyment of the gift nor arose by way of reservation out of that which was given and, accordingly, did not bring the case within the section. While the point was not strictly covered by authority, the contrary view was difficult to reconcile with *dicta* in *St. Aubyn* v. *Attorney-General*, *supra*. If a donor reserved to himself a beneficial interest in property and only gave to the donees such beneficial interests as remained after his own reserved interest had been satisfied, such reservation of a beneficial interest did not involve any benefit to the donor within the meaning of the section (*Commissioner for Stamp Duties of New South Wales* v. *Perpetual Trustee Co.* [1943] A.C. 425, 445-46). The right of the testator in this case to take remuneration for his services in managing the trust property (which was assumed to be appropriate and reasonable remuneration for any other manager) could not, however, be regarded as a beneficial interest in the property. He had reserved power to take benefit out of, or at the expense of, interests which were given, for the remuneration came out of the trust property and diminished the amount available for division among the tenants in common for their enjoyment, and, being clearly a benefit to the testator, was one which fell within the section, and death duty was accordingly payable on the whole of the trust estate. Their lordships would humbly advise Her Majesty that the appeal ought to be dismissed. The appellant must pay the costs of the appeal.

APPEARANCES: *Sir Garfield Barwick*, Q.C. (Australia), and *R. O. Wilberforce* (*Stephenson, Harwood & Tatham*); *G. Wallace*, Q.C. (Australia), *Sir Frank Soskice*, Q.C., and *E. B. Stamp* (*Light & Fulton*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.] **[3 W.L.R. 1127**

COURT OF APPEAL

LANDLORD AND TENANT: ASSIGNMENT OF SUB-LEASE WITHOUT CONSENT OF HEAD LESSOR: WHETHER "LAWFUL"

Drive Yourself Hire Co. (London), Ltd. *v.* Strutt and Another

Somervell, Denning and Romer, L.JJ. 24th November, 1953

Appeal from Lynskey, J. ([1953] 2 W.L.R. 953; 97 SOL. J. 317).

A lease for a term of twenty years from November, 1931, contained a covenant not to assign, underlet or part with possession of the premises without the consent of the landlord. In April, 1932, the landlord granted a licence to the first defendant, the tenant under the lease, for the creation of a sub-lease to expire on 10th November, 1951, one day before the expiry of the head lease. The licence provided that the sub-lease should contain a similar covenant that the sub-lessee should not assign without the consent of the superior landlord, that the consent under the licence was restricted to that sub-lease and that the covenant against assignment in the head lease should remain in force. The superior landlord was not a party to the sub-lease and the power of re-entry and determination of the sub-lease for breach of covenant was reserved to the first defendant alone. In January, 1937, with the consent of the first defendant and the superior landlord, the sub-lessee assigned the remainder of the term of the sub-lease to a company, and the licence giving consent to the assignment provided for the use and occupation of the premises by the second defendant. In February, 1951, the first defendant permitted the company to assign the balance of the sub-lease to the second defendant. The consent of the superior landlord to the assignment was not asked for or obtained. The second defendant continued in occupation of the premises after the expiry of the sub-lease and the head lease. The plaintiffs, the successors in title of the original superior landlord, brought proceedings for possession against both defendants, alleging a breach of covenant by the first defendant in failing to deliver up the premises at the end of her lease, and also alleging that the second defendant was in wrongful occupation of the premises. By her defence the first defendant contended that she was unable to deliver up possession by reason of the operation of the Rent Acts because the second defendant was in personal occupation of the premises which had been lawfully assigned to him; and that on the expiration of his sub-lease he became the tenant of the plaintiffs. The second defendant also contended that he was in lawful occupation of the premises and was entitled to the protection of subs. (3) of s. 15 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920. By their reply the plaintiffs contended that the assignment to the second defendant had been made without their consent and was unlawful. Lynskey, J., held that the second defendant was lawfully in occupation of the premises; and that he, having remained in possession after the expiration of the sub-lease, became the tenant under s. 15 (3) of the Act of 1920, which provides that, where the interest of a tenant is determined, "any sub-tenant to whom the premises . . . have been lawfully sub-let shall . . . be deemed to become the tenant . . ." The plaintiffs appealed.

SOMERVELL, L.J., said that the first point was whether s. 15 (3) applied to assignees; having regard to s. 12 (1) (*f*), it should be

construed as so applying. The second question was whether the second defendant's possession was "lawful." There must be implied an undertaking by the first defendant not to release or waive her right to require the superior landlord's consent; the superior landlord was not a party to the sub-lease, but the provision broken was one inserted for his protection under an agreement by the first defendant with him. In those circumstances, the assignment to the second defendant was not "lawful," and the appeal should be allowed.

DENNING, L.J., agreeing, said that there was an implied term against sub-letting in favour of the superior landlord which ran with the reversion; if the first defendant released the sub-tenants, she was acting unlawfully in breaking the implied term. Alternatively, the assignor company acted unlawfully in breaking a covenant which had been inserted for the protection of the superior landlords, and the case fell within s. 56 of the Law of Property Act, 1925, which provided that "any person may take the benefit of any covenant respecting land or other property although he may not be named as a party to the instrument."

ROMER, L.J., agreed. Appeal allowed. Leave to appeal refused.

APPEARANCES: *L. J. Belcourt* (*Merton Naydler*); *L. A. Blundell* and *D. J. Hyamson* (*Farrer & Co.*); *M. Waters* (*Child & Child*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[3 W.L.R. 1111**

PRACTICE NOTE

PROCEDURE: NOTIFICATION TO RESPONDENT OF DATE OF HEARING

Evershed, M.R. 30th November, 1953

EVERSHED, M.R., referred to the difficulty experienced in the Court of Appeal where appeals were sometimes set down and entered in the list before the respondents to such appeals had been notified or where respondents appearing in person were unaware of the date of hearing, and said that while there was no form of notice fixed by statute or the rules it had been suggested that adoption of the following procedure would save trouble and costs:—

PRACTICE NOTE.

"On setting down an appeal to the Court of Appeal one copy of the notice of appeal should be indorsed with a certificate of the solicitors for the appellant (or the appellant himself if in person) stating the date or dates upon which notice of appeal was served on the party or parties named as respondent(s).

The officer receiving the notice of appeal should satisfy himself that it was served in due time on the respondent(s), and must refuse to set the appeal down if it appears that the notice was served out of time.

The copy of the notice of appeal containing the certificate as to service shall be in the custody of the officer in attendance on the Court of Appeal when the appeal comes on to be heard.

Notices of appeal should contain after the signature by the solicitor for the appellant a statement as follows: 'No notice as to the date on which this appeal will be in the list for hearing will be given: it is the duty of solicitors to keep themselves informed as to the state of the lists. A respondent intending to appear in person should inform the Appeal Clerk, Room 136, Royal Courts of Justice, W.C.2, of that fact and give his address; if he does so, he will be notified by telegram to the address he has given of the date when the appeal is expected to be heard'."

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[1 W.L.R. 1503**

CHANCERY DIVISION

REVENUE: ESTATE DUTY: VALUATION OF SHARES IN PRIVATE COMPANY

In re Holt, deceased; Holt *v.* Inland Revenue Commissioners

Danckwerts, J. 25th November, 1953

Petition.

Estate duty became payable under s. 2 (1) (*c*) of the Finance Act, 1894, on 43,698 £1 ordinary shares in a private company, the subject of a voluntary settlement, on the death of the settlor on 11th March, 1948, on which date the shares fell to be valued. The shares did not constitute a controlling interest in the company, and there were restrictions under the articles on the transfer of the shares to persons approved by the directors. The rest of the shares were held by the settlor's family or on family trusts. There was no Stock Exchange quotation for the shares. The company was incorporated in 1897 and carried on the business of trading in West Africa, carrying goods to and from West Africa in its own ships. The company's practice had, since 1921, been to limit the dividend on the ordinary shares to 5 per cent. in order to build up its reserves, and to accumulate surplus profits in good years. In the second world war, when trading profits greatly increased, the company was unable to pursue that policy to the same extent as in the war of 1914–18, owing to the heavy taxation. The Commissioners determined the value of the shares for the purpose of estate duty at 34s. per share; at the hearing they were prepared to accept 25s. The trustees of the settlement contended that the value of the shares was 17s. 2d. The evidence was that in 1948 two of the company's five ships needed replacing, and the company had an overdraft of nearly £1,000,000, there was no likelihood of an increased dividend on the ordinary shares, and no plan for an issue of ordinary shares to the public. The company carried a large stock and would be adversely affected by a fall in prices, which was expected in 1948. The witnesses for the trustees valued the shares between 12s. and 17s. a share. The witnesses for the Commissioners considered that the company was in a very sound position, and that it was bound in the near future to increase its dividend of 5 per cent., and to issue ordinary shares to the public. The valuation of the shares by these witnesses was between 25s. and 30s.

DANCKWERTS, J., said that, having regard to *Inland Revenue Commissioners* v. *Crossman* [1937] A.C. 26, in estimating the value of shares in a private company for estate duty, regard should not be had to the fact that a shareholder might by the articles be compelled to sell his shares at a fair value ascertained in accordance with the articles, and that the directors had power to refuse to register a transfer, although it had to be assumed that once on the register the purchaser would be bound by the articles. By s. 7 of the Finance Act, 1894, and on the authorities, the value of the shares for estate duty purposes should be that which a hypothetical purchaser would pay on a hypothetical sale in the open market at the date of the death, but without the knowledge of after events. The evidence given on behalf of the Commissioners had over-estimated the future prospects of an increased dividend and a public issue of ordinary shares, and had ignored the fluctuating nature of West African trade, and the difficulty in building up reserves, but the witnesses for the trustees on the other hand had slightly undervalued the possibility of an increased dividend or an issue to the public of ordinary shares. The investor who would be likely to purchase shares of this class would not be the ordinary purchaser of shares on the Stock Exchange, but a person who would have some special reason for such a transaction; and who would not rush hurriedly into the transaction, but would seek the fullest possible information on past history, the particular trade of the company and the future prospects, and would take into consideration the larger profits of the 1914–18 period, the heavy losses thereafter, and the general level of the inter-war profits. The problem to be decided was a purely hypothetical one, and after careful consideration of the evidence, including the various tables put in and comparisons with the prices of shares of other companies quoted on the Stock Exchange, these shares should be valued for the purpose of estate duty at 19s. per share. Appeal allowed with costs. Leave to appeal refused.

APPEARANCES: *B. J. MacKenna*, Q.C., *L. C. Graham-Dixon*, Q.C., and *G. A. Rink* (*Sharpe, Pritchard & Co.*, for *Alsop, Stevens & Co., Liverpool*); *Sir Reginald Manningham-Buller*, S.-G., Q.C., *Geoffrey Cross*, Q.C., and *J. H. Stamp* (*Solicitor of Inland Revenue*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[1 W.L.R. 1488**

QUEEN'S BENCH DIVISION

ARBITRATION: COSTS OF THE AWARD: WHETHER ARBITRATOR'S DISCRETION JUDICIALLY EXERCISED

Smeaton Hanscomb & Co., Ltd. *v.* Sassoon I. Setty, Son & Co. (No. 2)

Devlin, J. 1st December, 1953

Motion.

An arbitrator made an award in the form of a special case setting out questions of law for the opinion of the court and awarded that: "However the court answers the . . . questions . . . each party shall bear their own costs of the arbitration and . . .

the sellers shall pay the cost of this my award . . ." No reasons for the arbitrator's order as to costs were set out in the award. The court decided the question of law in favour of the sellers. The sellers now moved for an order that that part of the award relating to the costs of the award itself be set aside.

DEVLIN, J., said that an arbitrator's power to deal with costs was governed by s. 18 of the Arbitration Act, 1950, which in terms conferred a discretion on the arbitrator. In *Lloyd Del Pacifico* v. *Board of Trade* (1930), 46 T.L.R. 476, it was laid down as a principle that an arbitrator's discretion as to costs must be exercised judicially. There could be no distinction in principle between the costs of the reference and the costs of the award. *Prima facie* a successful party was entitled to his costs, but the phraseology of the award as to the costs showed that he had nothing in mind which would have caused him to feel that the conduct of one party ought to affect the usual order that costs follow the event. Those considerations showed that the arbitrator had not applied his mind judicially to the question of costs. A lay arbitrator, if he wished to depart from the usual order that costs follow the event, should bear in mind that certain principles as to costs had been worked out by the court and should invoke assistance as to what those principles were from those appearing before him. In such a case it would be proper and convenient for an arbitrator, when making an award in the form of a special case, to set out in the case the grounds which caused him to depart from the usual order. That part of the award complained of would be set aside. Order accordingly.

APPEARANCES: *Adrian Hamilton* (*Parker, Garrett & Co.*); *J. P. Widgery* (*William A. Crump & Son*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[1 W.L.R. 1481**

JUSTICES: CLERK'S IMPROPER RETIREMENT WITH JUSTICES: NO GROUND FOR CERTIORARI

***Ex parte* How**

Lord Goddard, C.J., Sellers and Barry, JJ. 4th December, 1953

Application for leave to apply for an order of certiorari.

The applicant, Alfred James How, sought leave to apply for an order of certiorari on the ground that his conviction by justices was bad since, although no point of law was raised, the justices' clerk had accompanied the justices when they retired to consider their verdict. The applicant's affidavit showed that on 18th September, 1953, he pleaded not guilty before Dartford justices to a charge of driving a trolley bus without reasonable consideration for other road users, contrary to s. 12 (1) of the Road Traffic Act, 1930. It was alleged in the affidavit that, after the evidence had been heard, the chairman of the justices leaned towards his clerk and said, "Dismissed," and the clerk spoke to the chairman in an inaudible voice; that the justices then retired to consider their verdict, and the clerk left the court and retired with them; that on returning to court the justices convicted the applicant and fined him £2 and ordered him to pay £4 4s. 11d. costs; and that the clerk had been with them throughout the whole of their retirement, which had lasted about five minutes, although he was not called to retire with them and no question of law was raised.

LORD GODDARD, C.J., said that it was not a case in which the court would give leave. It should be understood that the court would not always quash a conviction because justices had not followed their recent directive [[1953] 1 W.L.R. 1416; *ante*, p. 816], since that did not necessarily go to the merits of the case. If justices disregarded that directive it should be the ground of a complaint against them to the Lord Chancellor.

SELLERS and BARRY, JJ., agreed. Application refused.

APPEARANCES: *Gerald Owen* (*Geoffrey B. Gush & Co.*).

[Reported by Miss SHEILA COBON, Barrister-at-Law.] **[1 W.L.R. 1480**

ARBITRATION: SUCCESSFUL PARTY DEPRIVED OF COSTS: DISCRETION

Lewis *v.* Haverfordwest Rural District Council

Lord Goddard, C.J. 2nd December, 1953

Special case stated by an arbitrator.

The claimant was the tenant of a small farm near St. Davids. In November, 1948, the respondent council, in the exercise of their powers under the Public Health Act, 1936, constructed an outfall sewer through the property, the work being completed about December, 1949. As the council made no offer of compensation for the damage caused, the matter was referred to arbitration. The arbitrator awarded £156 to the claimant, and directed that the parties should bear their own costs. On being asked to state a case, the arbitrator stated that his award as to costs was based on the fact that during the long time between the event and the arbitration neither party made any serious effort to settle the matter.

LORD GODDARD, C.J., said that it was curious that lay arbitrators always seemed to think that each party should bear his own costs. Perhaps the present case and *Smeaton Hanscomb & Co., Ltd.* v. *Sassoon I. Setty, Son & Co.* [1953] 3 W.L.R. 1481; *ante*, p. 876, heard by Devlin, J., the day before, would teach them that the House of Lords had laid down in *Donald Campbell & Co.* v. *Pollak* [1927] A.C. 732 that a successful litigant should receive his costs unless in the exercise of a discretion, judicially exercised, special circumstances were found: that meant that an arbitrator must not act capriciously and must show a proper reason connected with the case. It was not such an exercise of discretion to say that no costs should be awarded, because neither party did anything. The claimant had received in the proceedings a sum to which he was entitled under the Act, and the council had made no offer at any time. There would be an order setting aside the award as to costs, and, by consent, an order that the claimant should be paid his taxed costs. Judgment for the claimant.

APPEARANCES: *J. D. May* (*John L. Rendall*); *J. Cook Rogers* (*Denton, Hall & Burgin*, for *Philipps Williams & Co.*, Haverfordwest).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 1486**

PROBATE, DIVORCE AND ADMIRALTY DIVISION

HUSBAND AND WIFE: NEGLECT TO MAINTAIN: HUSBAND'S SERIOUS ALLEGATIONS DISMISSED: HUSBAND'S OFFER OF RECONCILIATION

Dyson *v.* Dyson

Barnard, J. 24th November, 1953

Originating summons under s. 23 of the Matrimonial Causes Act, 1950.

The parties were married in 1948 and there was one child. In June, 1951, the husband presented a petition for divorce, alleging that his wife had been guilty of cruelty and adultery. The charge of cruelty was a very grave reflection on the wife as a housewife and as a mother: she was said to have kept the home in such a filthy condition that the husband would come home and vomit because of the disgusting smells, and she was also accused of so neglecting the child of the marriage as to endanger the child's health. His petition was dismissed by Collingwood, J., on 13th December, 1951, who said of the charges of cruelty that they were grossly exaggerated, and deliberately distorted, and that there was no truth in the complaints regarding the child. The wife's conduct with the co-respondent, however, was described as "utterly reprehensible"; but the husband's appeal to the Court of Appeal on the issue of adultery only was dismissed on 16th June, 1952. Four days after the dismissal of the appeal the husband wrote to the wife suggesting that they should meet and see if they could "get together again." The wife by her solicitor refused to meet the husband and stated that there could be no question of a reconciliation; it was further stated that in view of the allegations which had been made and persisted in the wife could not accept the husband's offer as genuine. A few months later the wife issued an originating summons under s. 23 of the Matrimonial Causes Act, 1950, alleging wilful neglect to maintain.

BARNARD, J., said that the husband, who had not been guilty of a matrimonial offence, had not been guilty of conduct of so grave and weighty a nature as to make married life quite impossible. A wife could not for ever set up the fact that her husband had made such charges, which had been tried out in court and dismissed, as providing her with just cause thereafter for refusing to live with him. The question whether the letter of 20th June, 1952, written just after the dismissal of the appeal, was genuine was not quite so easy to decide, for it was difficult to believe that a husband who had described his wife in the way in which he had done when he made the charges of cruelty was ready to have her back. His lordship referred to *Price* v. *Price* [1951] P. 413, and said that it was clear from that case that an offer by a spouse, to be genuine, did not carry the implication that

the person who made it was really desirous of having the other party back, provided he was honest in saying that he would receive her. His lordship considered the evidence, and said that in spite of the somewhat grim surrounding circumstances he (his lordship) was satisfied that the offer had been genuine. The wife had definitely refused to meet the husband thereafter, and her summons must be dismissed. Summons dismissed.

APPEARANCES: *Neville Faulks (A. F. & R. W. Tweedie,* for *Cook, Fowler & Outhet,* Scarborough); *R. J. A. Temple,* Q.C., and *H. S. Law (Ludlow, Head & Walter,* for *Willey Hargrave and Co.,* Leeds).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[3 W.L.R. 1141**

HUSBAND AND WIFE: NEGLECT TO MAINTAIN: PAYMENTS FROM DATE OF SUMMONS

McLellan *v.* McLellan

Karminski, J. 23rd November, 1953

Application.

On 13th November, 1953, Karminski, J., made an order under s. 23 of the Matrimonial Causes Act, 1950, whereby the husband was ordered to make periodical payments to the wife of £850 a year and to secure to the wife further periodical payments of £150 a year. The originating summons was issued on 27th May, 1953, and net payments of £125 were made by the husband between that date and the hearing of the summons on 10th June, 1953, to cover the three months ending 30th May, 1953, and on 6th August, 1953, to cover the three months ending 31st August, 1953. No further payments had been made. No mention was made at the hearing of the date from which the periodical payments should run, but the order as drawn dated the payments as from 13th November, 1953, the date of the hearing. It was submitted on behalf of the wife that the proper order should be that the payments should date from 27th May, 1953, credit being given for the £125 paid in August. The application was resisted; and it was submitted that the court had no power to make an order equivalent to alimony pending suit, or to make an interim order, until there had been an actual finding of wilful neglect to provide reasonable maintenance. In such circumstances therefore (it was submitted) no order, interim or otherwise, could be dated back before the date of the finding.

KARMINSKI, J., said that the section, which did not indicate from what date the order might run, was intended to leave the matter of date very largely in the hands of the court. The court had power to order payments to be made from the date of the summons, once the allegation of wilful neglect to maintain had been proved; and it would be proper to make such an order in the present case, credit to be given for all sums received from the husband since the date of the summons.

Order accordingly.

APPEARANCES: *Roger Ormrod (Kenneth Brown, Baker, Baker);* *Victor Williams (W. T. Donovan).*

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[3 W.L.R. 1139**

SURVEY OF THE WEEK

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Electoral Registers Bill [H.C.] [4th December.
Navy, Army and Air Force Reserves Bill [H.C.] [9th December.
Pests Bill [H.L.] [10th December.

To make further provision with respect to the destruction or control of rabbits and other animals and birds and to the use of spring traps for killing or taking animals.

Read Second Time:—

Armed Forces (Housing Loans) Bill [H.C.] [10th December.
Expiring Laws Continuance Bill [H.C.] [8th December.
Rights of Entry (Gas and Electricity Boards) Bill [H.C.] [11th December.

Read Third Time:—

Air Corporations Bill [H.C.] [10th December.
Glasgow Corporation (Water &c.) Order Confirmation Bill [H.C.] [8th December.

In Committee:—

National Art Collections Bill [H.L.] [8th December.
National Museum of Antiquities of Scotland Bill [H.L.] [10th December.
Protection of Birds Bill [H.L.] [10th December.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Agriculture (Miscellaneous Provisions) Bill [H.C.] [9th December.

To continue the power to make grants or contributions in respect of field drainage, liming and other matters; to amend Part IV of the Agriculture Act, 1947, with respect to the holdings to be treated as smallholdings, and to the contributions to losses of smallholdings authorities; to alter the manner of appointing nominated members of Agricultural Land Tribunals, and to enable those Tribunals to award costs and to refer questions of law to the High Court; to make further provision with respect to research and education in sugar-beet growing, to the collection of waste for use as animal feeding stuffs, to preventing the spread of pests and diseases by imported bees, and to the application of the Diseases of Animals Act, 1950, to air transport; to amend the Seeds Act, 1920, with respect to the consequences of contraventions of that Act, and to the effect of particulars given thereunder; to amend the law as to agricultural wages of holiday workers in Scotland; and to extend the Corn Returns Act, 1882, to Scotland.

Development of Inventions Bill [H.C.] [10th December.

To extend to ten years the period during which advances may be made to the National Research Development Corporation out of the Consolidated Fund and during which the Board of Trade may with the approval of the Treasury waive payments by way of interest on such advances; to make further provision as to the functions of the Corporation relating to research; and otherwise to amend the Development of Inventions Act, 1948.

Landlord and Tenant Bill [H.C.] [10th December.

To provide security of tenure for occupying tenants under certain leases of residential property at low rents and for occupying sub-tenants of tenants under such leases; to enable tenants occupying property for business, professional or certain other purposes to obtain new tenancies in certain cases; to amend and extend the Landlord and Tenant Act, 1927, the Leasehold Property (Repairs) Act, 1938, and section eighty-four of the Law of Property Act, 1925; to confer jurisdiction on the County Court in certain disputes between landlords and tenants; to make provision for the termination of tenancies of derelict land; and for purposes connected with the matters aforesaid.

Read Second Time:—

Consolidated Fund Bill [H.C.] [7th December.

To apply a sum out of the Consolidated Fund to the service of the year ending on the thirty-first day of March, One Thousand Nine Hundred and Fifty-four.

Housing (Repairs and Rents) (Scotland) Bill [H.C.] [9th December.
Juries Bill [H.C.] [4th December.
Law Reform (Limitation of Actions, &c.) Bill [H.C.] [4th December.
Protection of Birds Bill [H.C.] [4th December.

Read Third Time:—

Cinematograph Film Production (Special Loans) Bill [H.C.] [10th December.
Inverness Harbour Order Confirmation Bill [H.C.] [10th December.

To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to Inverness Harbour.

Statute Law Revision Bill [H.L.] [10th December.

B. Debates

On the second reading of the **Law Reform (Limitation of Actions, etc.) Bill** Mr. JOHN PEYTON said cl. 1 of the Bill dealt with repeal of certain enactments prescribing exceptional privileges and periods in which an action might be brought. The first was the Public Authorities Protection Act, 1893, as amended by the Limitation Act, 1939. He felt very strongly that this protection was no longer called for to-day. He instanced the case of *Freeborn* v. *Leeming*, where a medical officer of health negligently diagnosed a complaint. When the error was discovered the plaintiff's right of action was barred. Often, the only person to benefit from the protection was an insurance company. The protection was also a slight on local authorities. It suggested that they were not as competent to keep proper records as were other enterprises.

Clause 2 would require all claims for personal injuries arising from negligence, nuisance and breach of duty to be brought within three years, regardless of the status of the defendants, with special provisions in case of disability. Clause 3 contained a parallel amendment to the Fatal Accidents Act, 1846. Clause 4 would repeal the provision of the Law Reform (Miscellaneous Provisions) Act, 1934, requiring that the action should have arisen within six months before death. Clause 5 (1) applied the Act to the Crown. Clause 5 (2) would amend the Maritime Conventions Act, 1911, to apply the limit of two years to all ships owned by the Crown or otherwise.

Mr. Peyton said his Bill had the support of many interested bodies, including The Law Society.

Mr. DAVID WEITZMAN, supporting the Bill, said that apparently the Treasury Solicitor used his discretion as to whether he should plead the Statute of Limitation. He also understood that the Ministry of Health had instructions about cases brought against hospitals that the statute should not be pleaded. On the other hand there were judicial pronouncements that it was wrong for a public authority not to plead the statute. He thought judges should be given a discretion to extend the time for issuing writ.

Mr. RONALD BELL pointed out that a joint tortfeasor with a public authority at present might be liable for the whole of the damages and be debarred from obtaining contribution from the public authority. He hoped the Bill would contain transitional provisions. Mr. GRAHAM PAGE hoped that the three-year limitation period would be applied to all actions in tort, not merely those enumerated in the Bill.

The ATTORNEY-GENERAL said the Government commended the Bill most heartily in principle. They approved of the clause binding the Crown. The Lord Chancellor was quite prepared to listen to argument that the courts should have an option to extend the period of limitation. The question of transitional provisions would also be considered. [4th December.

C. Questions

Legal Aid (Divorce)

Mr. REMNANT asked why a person, granted legal aid when seeking a divorce, was debarred from such aid if the court order needed enforcing for the payment of alimony. The ATTORNEY-GENERAL said that the litigant was debarred from receiving legal aid only if the certifying committee decided that it was unreasonable that enforcement proceedings should be brought in the High Court. [7th December.

Legal Aid (County Courts)

The ATTORNEY-GENERAL said that the question of extending the Legal Aid Scheme to the county court and of bringing into operation the provisions of the Legal Aid and Advice Act, 1949, as to free legal advice, were still under consideration. He could give no indication as to when a definite decision would be reached. [7th December.

Visiting Forces (Affiliation Orders)

Sir HUGH LUCAS-TOOTH said the question of enforcement of affiliation orders against members of visiting forces was not a matter which could be dealt with by amendment of the Visiting Forces Act, 1952. The courts had jurisdiction to make affiliation orders against American servicemen, but they enjoyed the same immunities from processes of enforcement thereof as were conferred on British soldiers by the Army Act. Discussions were taking place with the American authorities and it was hoped to announce the outcome before the Visiting Forces Act, 1952, was brought into force. [7th December.

Tax Evasion (Decision as to Prosecution)

Mr. HOUGHTON asked whether the Chancellor of the Exchequer was aware of the comments of Mr. Justice Stable, made at Leeds Assizes on 12th November, 1953, and on what grounds the Board of Inland Revenue based their decision to prosecute or to settle on payment of money penalties in tax evasion cases.

Mr. R. A. BUTLER said the position was set forth in the following answer to a question given by Sir John Anderson on 5th October, 1944 :—

> "The practice of the Commissioners in this matter is governed by s. 34 of the Finance Act, 1942 [now s. 504, Income Tax Act, 1952], which makes provision for the admissibility in evidence of any disclosure made in the circumstances there set out. As the section indicates, the Commissioners have a general power under which they can accept pecuniary settlements instead of instituting criminal proceedings in respect of fraud or wilful default alleged to have been committed by a taxpayer. They can, however, give no undertaking to a taxpayer in any such case that they will accept such a settlement and refrain from instituting criminal proceedings even if the case is one in which the taxpayer has made full confession and has given full facilities for investigation of the facts. They reserve to themselves complete discretion in all cases as to the course which they will pursue, but it is their practice to be influenced by the fact that the taxpayer has made a full confession and has given full facilities for investigation into his affairs and for examination of such books, papers, documents or information as the Commissioners may consider necessary.
>
> The above statement of the Commissioners' practice should be regarded as replacing the one made by my predecessor on the second reading of the Finance Bill, 1942, which has, I understand, given rise to some misapprehension."

[8th December.

Tax Appeals (Costs)

Mr. R. A. BUTLER said he could not adopt a suggestion that, when the Inland Revenue decided to appeal against a decision of the local commissioners of Income Tax, solely on a question of principle, the whole cost of the appeal should be borne by the Treasury. Special arrangements as to costs were, however, made when the taxpayer was of modest means. The Board of Inland Revenue was also willing, in cases where it appealed to the courts against a decision by Commissioners on a novel or doubtful question of general application, to consider sympathetically proposals for an arrangement about costs. [8th December.

Post-War Credits : Set-off

Mr. R. A. BUTLER stated that post-war credits not yet due for payment could not in general be accepted in satisfaction of taxation obligations. Under the arrangement referred to in the House of Commons on 29th October, 1946, the post-war credit for the one year 1945–46 was set off against arrears of P.A.Y.E. at the end of that year, but he did not propose to extend that arrangement. In the special case of a bankrupt person, his post-war credits might fall to be set off under the bankruptcy law against tax due from him. [8th December.

Requisitioned Property : Enhancement Value

Answering a question about the recommendation of the Second Working Party Report on Requisitioned Property to waive the recovery of enhancement value arising from works of conversion or improvement during requisitioning, Mr. MARPLES stated that the Minister of Town and Country Planning was not yet ready to comment on the Report, but he sought to adopt a generous attitude in that type of case. [8th December.

Summary Trial of Minor Offences (Attendance of Witnesses)

The HOME SECRETARY said he was considering the report of a Working Party set up to consider and report on measures which might be taken to save the time of witnesses at the summary trial of minor offences. He hoped shortly to issue a circular commending some of these suggestions.

In reply to further questions, Sir David Maxwell Fyfe said that approximately 2,500 man-hours were occupied by police officers of the Metropolitan Police District during the month of November at magistrates' courts for the purpose of giving evidence in alleged cases of obstruction. What he was trying to do was to bring into being a procedure for finding out in advance the cases

where the defendant did not want to attend, and, therefore, did not want to dispute the matter, or where he would indicate that he would plead guilty, so that the attendance of, at any rate, one or two witnesses could be dispensed with. [10th December.

SUSPECTED PERSONS (POLICE QUESTIONING)

The HOME SECRETARY said the General Orders of the Metropolitan Police, and the instructions given in the Metropolitan police training schools, were directed towards ensuring that there should be strict compliance with the provisions of the Judges' Rules. [10th December.

LAY JUSTICES, LONDON (POWERS)

The HOME SECRETARY said he was carefully considering the resolution of the County of London Justices passed on 29th October last requesting increased powers for lay justices in the County of London, and he would send them a considered reply as soon as possible. He reminded the House that among recent measures taken to reduce the congestion in the metropolitan courts and to use the justices in question were the setting up of a special domestic proceedings court and the making of arrangements for justices to sit in a spare room at Bow Street.
[10th December.

MAINTENANCE ORDERS (POLICE INQUIRIES)

The HOME SECRETARY said that where a maintenance order had been made the police did their best to serve a summons or to execute a warrant issued by the court. But, if they had no clue to the man's whereabouts, they could not undertake such extensive inquiries as they would in relation to a person suspected of a serious criminal offence. [10th December.

STATUTORY INSTRUMENTS

Act of Sederunt (Fees of Town Clerks and Clerks of the Peace), 1953. (S.I. 1953 No. 1776 (S. 118).) 6d.

Additional Import Duties (No. 4) Order, 1953. (S.I. 1953 No. 1760.)

Bacon (Amendment No. 2) Order, 1953. (S.I. 1953 No. 1764.) 6d.

British Commonwealth and Foreign Post Warrant, 1953. (S.I. 1953 No. 1732.) 1s. 5d.

British Postal Agencies (Commonwealth and Foreign Post) Warrant, 1953. (S.I. 1953 No. 1733.) 1s. 5d.

British Protectorates, Protected States and Protected Persons (Amendment) Order in Council, 1953. (S.I. 1953 No. 1773.)

Civil Defence (Grant) Regulations, 1953. (S.I. 1953 No. 1777.) 6d.

Condensed Milk Order, 1953. (S.I. 1953 No. 1784.)

Control of Building Operations (No. 19) Order, 1953. (S.I. 1953 No. 1793.) 5d.

County of Warwick (Electoral Divisions) Order, 1953. (S.I. 1953 No. 1790.) 5d.

Defence Regulations (No. 15) Order, 1953. (S.I. 1953 No. 1766.)
This order, which came into operation on 10th December, revokes reg. 60J of the Defence (General) Regulations and provides that reg. 62 shall cease to apply to Scotland.

Emergency Laws (Continuance) Order, 1953. (S.I. 1953 No. 1768.) 5d.
The Defence Regulations continued for another year from 10th December, 1953, by this Order are noted at p. 788, *ante*.

Emergency Laws (Miscellaneous Provisions) (Colonies, etc.) Order in Council, 1953. (S.I. 1953 No. 1770.)

Emergency Laws (Miscellaneous Provisions) (Isle of Man) Order in Council, 1953. (S.I. 1953 No. 1769.) 5d.

Food (Inspection of Undertakings) (Revocation) Order, 1953. (S.I. 1953 No. 1739.)

Food (Licensing of Wholesalers) (Revocation) Order, 1953. (S.I. 1953 No. 1763.)

Iron and Steel Prices (No. 7) (Revocation) Order, 1953. (S.I. 1953 No. 1778.)

Keg and Drum Wages Council (Great Britain) Wages Regulation Order, 1953. (S.I. 1953 No. 1762.) 6d.

London Traffic (Grand Union Canal Bridge, Slough) (Amendment) Regulations, 1953. (S.I. 1953 No. 1748.)

London Traffic (Prescribed Routes) (No. 30) Regulations, 1953. (S.I. 1953 No. 1747.)

National Health Service (Determination of Areas of Regional Hospital Boards) (Scotland) Amendment Order, 1953. (S.I. 1953 No. 1787 (S. 119.))

National Insurance (Industrial Injuries) (Prescribed Diseases) Amendment (No. 2) Regulations, 1953. (S.I. 1953 No. 1740.) 5d.

National Insurance (Reciprocal Agreement with Australia) Order, 1953. (S.I. 1953 No. 1772.) 8d.

National Service Act, 1948 (Duration) Order, 1953. (S.I. 1953 No. 1771.)

Patents (Extension of Period of Emergency) Order, 1953. (S.I. 1953 No. 1775.)

Petty Sessional Divisions (Anglesey) Order, 1953. (S.I. 1953 No. 1756.) 5d.

Petty Sessional Divisions (Buckinghamshire) Order, 1953. (S.I. 1953 No. 1791.) 6d.

Petty Sessional Divisions (East Kent) Order, 1953. (S.I. 1953 No. 1757.) 6d.

Petty Sessional Divisions (Flintshire) Order, 1953. (S.I. 1953 No. 1789.) 6d.

Petty Sessional Divisions (Westmorland) Order, 1953. (S.I. 1953 No. 1758.)

Registered Designs (Extension of Period of Emergency) Order, 1953. (S.I. 1953 No. 1774.)

Retention of Cables and Mains under Highways (Ross and Cromarty) (No. 1) Order, 1953. (S.I. 1953 No. 1745.)

Retention of Cables and Pipes under Highways (Lancashire) (No. 3) Order, 1953. (S.I. 1953 No. 1737.)

Retention of Cables under Highway (Glamorgan) (No. 1) Order, 1953. (S.I. 1953 No. 1742.)

Retention of Cables under Highway (Glamorgan) (No. 2) Order, 1953. (S.I. 1953 No. 1755.)

Retention of Cables under Highways (Lincolnshire—Parts of Lindsey) (No. 3) Order, 1953. (S.I. 1953 No. 1743.)

Retention of Pipes under Highways (Wiltshire) (No. 1) Order, 1953. (S.I. 1953 No. 1744.)

Road Vehicles (Registration and Licensing) (Amendment) Regulations, 1953. (S.I. 1953 No. 1753.)

Road Vehicles (Transport Levy) Regulations, 1953. (S.I. 1953 No. 1754.)

Stopping up of Highways (Bristol) (No. 3) Order, 1953. (S.I. 1953 No. 1780.)

Stopping up of Highways (Renfrewshire) (No. 1) Order, 1953. (S.I. 1953 No. 1781.)

Stopping up of Highways (Somerset) (No. 4) Order, 1953. (S.I. 1953 No. 1738.)

Stopping up of Highways (Worcestershire) (No. 9) Order, 1953. (S.I. 1953 No. 1779.)

Sugar Confectionery and Food Preserving Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1953. (S.I. 1953 No. 1783.) 5d.

Supplies and Services (Continuance) Order, 1953. (S.I. 1953 No. 1767.)
The Defence Regulations continued for another year from 10th December, 1953, by this Order are noted at p. 788, *ante*.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

At the monthly meeting of the Board of Directors of the SOLICITORS' BENEVOLENT ASSOCIATION, held on 2nd December, the resignation of Mr. W. N. Riley of Brighton was accepted with regret. Mr. F. J. R. Dodd, M.B.E., B.A., LL.B., was elected a member of the Board in his place.

Eleven solicitors were admitted as members of the Association, bringing the total membership up to 7,658. Grants totalling £1,839 7s. 8d. were made to twenty-two beneficiaries, £175 of which was in respect of "special" grants for clothing, convalescence, etc. Two first applications for relief were considered and appropriate grants made—one from a solicitor's widow over 80 years of age, and the other from the widow of a solicitor who had died suddenly, leaving his wife unprovided for and two children at the commencement of their careers. Amongst the recipients of "special" grants were three beneficiaries over 80 years of age.

The support of those solicitors who have not yet joined their own professional benevolent association is earnestly sought; the minimum annual subscription is £1 1s., and a life membership subscription £10 10s. Further information will gladly be supplied on request to the Secretary, Clifford's Inn, Fleet Street, London, E.C.4.

NOTES AND NEWS

Professional Announcement

Messrs. E. G. Clark & Hallam, Solicitors, of 12 Sun Street, Lancaster, and 28 Market Street, Carnforth, have, as from 1st December, 1953, taken into partnership Mr. Nigel Francis Hallam. The name of the firm will remain unchanged.

Honours and Appointments

Mr. EDWIN KEITH RICHMOND, deputy secretary and solicitor of the South Western Gas Board, has been appointed secretary of the Yorkshire Electricity Board.

Mr. ALAN STANSFIELD, assistant solicitor to Burnley Corporation, has been appointed senior assistant solicitor to South Shields Corporation, in succession to Mr. A. G. Brown.

Mr. FRANK DIXON WARD, solicitor, of Peterborough, and senior assistant solicitor to West Ham County Borough Council, has been appointed deputy Town Clerk of Hove.

The following appointments are announced in the Colonial Legal Service :—

Mr. N. A. P. METHVEN, to be Resident Magistrate, Tanganyika ; and Mr. T. D. E. ROBERTS, to be Crown Counsel Nyasaland.

Personal Notes

Mr. John Brock Allon, Town Clerk of Wolverhampton for twenty-four years, was presented on 4th December with a portable typewriter on behalf of past and present mayors and mayoresses. He is to retire on 31st December. Mrs. Brock Allon was presented with a leather travelling handbag.

Mr. Henry Houghton has retired, aged 84, after seventy years with one firm of London solicitors. When he began work before he was 14 as a messenger in barristers' chambers in Lincoln's Inn, one of his jobs was to carry fresh water from a pump in New Square.

Mr. Douglas Michael King, solicitor, of Birmingham, was married on 8th December to Miss Jean Waller, of Acock's Green.

Miscellaneous

At The Law Society's Intermediate Examination, held on 5th and 6th November, 1953, six candidates gave notice for the whole examination, of whom three passed both parts. Of 279 candidates who gave notice for the law portion only, 174 passed, of whom Miss R. M. C. Archer, W. L. Barton, M. A. Brown, B.A. (Oxon.), T. G. Dixon, N. R. Pearless and M. Simkins were placed in the first class. Of 454 candidates for the trust accounts and book-keeping portion only, 280 passed.

DOUBLE TAXATION AGREEMENT

SWITZERLAND

An Inland Revenue notice states that agreement has now been reached at the official level on a proposed convention between the United Kingdom and Switzerland for the avoidance of double taxation in relation to taxes on income. Preliminary negotiations have also taken place for a convention relating to taxes on the estates of deceased persons.

DOUBLE TAXATION RELIEF

CEYLON FOOD SUBSIDIES TEMPORARY TAX

An Inland Revenue notice states that the Ceylon Food Subsidies Temporary Taxes Act, 1952, imposes, with effect from the year commencing 1st April, 1952, a temporary surcharge at 10 per cent. on the amount of Ceylon income tax payable. This surcharge is a tax " of a substantially similar character " to the Ceylon income tax and profits tax and therefore qualifies for credit under the agreement with Ceylon.

The Ceylon rate of income tax on non-resident companies is higher than that on companies resident in Ceylon ; for 1952–53 the rates are 36 per cent. and 30 per cent. respectively. Under Article IX of the agreement it is provided that the rate of tax chargeable on non-resident companies shall not, where they are residents of the United Kingdom (as defined in Article II (1) (*f*)), exceed by more than 6 per cent. the rate chargeable on companies resident in Ceylon. In some of those cases, however, the full 10 per cent. addition for the food subsidies tax may have been charged, i.e., 10 per cent. of 36 per cent., making 39·6 per cent. in all, as opposed to the agreement limit of 39 per cent. In such a case the additional ·6 per cent. is not available for credit and the company should be advised to apply to the Ceylon authorities, who will give effect to such adjustments or repayments as may be necessary.

UNITED STATES COURTS MARTIAL

The General Council of the Bar states that members of the English Bar appearing before United States courts martial in this country should not wear robes. This direction is given at the request of the Staff Judge Advocate at Headquarters, United States Third Air Force, who has pointed out that it is not the custom for advocates appearing before United States courts to be robed. The position as regards the wearing of robes at English courts martial is not affected.

In connection with the announcement by the *Accountant* of annual awards to be made to companies whose shares are quoted on a recognised stock exchange, in relation to the form and contents of the reports and accounts as issued to their members (see p. 777, *ante*), companies are requested to send for consideration copies of their reports and accounts (with any chairman's statement circulated therewith) to The Secretary, "The Accountant" Annual Award, 4 Drapers' Gardens, Throgmorton Avenue, London, E.C.2. These should be sent at the time of publication, but for the 1954 award should reach the Secretary not later than 30th January, 1954. The award in 1954 will be made in respect of the reports and accounts laid before the company in general meeting within the year ending 31st December, 1953, and being for the financial year or other financial period ended last preceding that date.

YORKSHIRE DALES NATIONAL PARK DESIGNATION ORDER

The Yorkshire Dales National Park (Designation) Order, signed on 7th December by the Chairman of the National Parks Commission, will be submitted in due course to the Minister of Housing and Local Government for confirmation. The area covered by the Order, which comprises a total of approximately 680 square miles, lies wholly within the North and West Ridings of Yorkshire. The boundary is broadly similar to that proposed in 1947 in the Hobhouse Report, though certain changes have been made, notably the addition of some eighty square miles in Sedbergh Rural District, including Dentdale and the Howgill Fells. A copy of the Order, together with a map showing the boundaries, will be on view in the course of the next few days in all the local authority districts affected by the Order, and also at the offices of the National Parks Commission, 3 Chester Gate, Regent's Park, London, S.W.1.

Wills and Bequests

Mr. B. McCall, solicitor, of Harrogate, left £29,658.

Mr. W. P. Norton, solicitor, of Old Broad Street, London, E.C.2, left £62,571.

Mr. W. D. Stansfield, solicitor, of Chorley, left £4,599 (£4,379 net).

OBITUARY

MR. E. R. ABBOTT

Mr. Edmund Rushworth Abbott, O.B.E., solicitor, of Victoria Street, London, S.W.1, died on 8th December, aged 87. Late clerk to the Ruislip Northwood U.D.C., he was admitted in 1889.

MR. J. E. EDMINSON

Mr. John Evelyn Edminson, solicitor, of Reading, died on 7th December, aged 69. He was admitted in 1907.

MR. F. G. GARNER

Mr. Francis G. Garner, formerly Town Clerk of Walthamstow, died on 4th December, aged 70.

MR. J. B. McCUTCHEON

Mr. John Bothwell McCutcheon, solicitor, of Belfast, died on 19th November, aged 91. Admitted in 1886, he was President of the Incorporated Law Society of Northern Ireland in 1923.

COL. B. H. L. PRIOR

Colonel Bernard Henry Leathes Prior, D.S.O., T.D., solicitor, of Norwich, died recently, aged 76. He was for some years hon. secretary to the Jenny Lind Hospital foundation. He was awarded the D.S.O. in 1917 and a bar in 1918, being also mentioned in dispatches five times. He was admitted in 1902.

MR. W. E. SMITH

Mr. William Eric Smith, solicitor, of Nantwich and Audlem, died recently, aged 72. From 1932 to 1950 he was clerk to Audlem Parish Council, from 1902 to 1950 clerk to Buerton Parish Council and from 1927 to 1950 clerk to Hankelow Parish Meeting. He was admitted in 1903.

MR. K. S. THOMPSON

Mr. Keith Sydney Thompson, retired solicitor, of London, E.C.4, died on 8th December. He was admitted in 1908.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

Hire-Purchase Agreements

Sir,—Is it not high time that an amendment be made to the Hire-Purchase Act, 1938, to keep pace with the increase in prices of most household articles?

Presumably it is placing too high a moral burden on shop-keepers to advise their customers of their rights if they split their hire-purchase transaction into separate agreements so as to bring the entire transaction within the protective scope of the Act?

DAVID C. HUMPHREYS.

Temple, E.C.4.

Will Forms

Sir,—*A propos* "Escrow's" reference to these stationery will forms being so frequently "signed" in the attestation clause [*ante*, p. 809]. In a similar case, when the usual affidavit of due execution was sent to one of the attesting witnesses, he returned it saying he had never seen the other witness!

The testator had collected the witnesses on separate occasions.

If only he had signed in the correct place this fatal defect would never have been discovered.

The result was that a previous will, on a similar form, was ultimately discovered, appointing an executor (who duly proved it) and giving everything to testator's wife who had since predeceased him.

Unfortunately the estate passed on the intestacy to cousins and not at all as testator wished.

T. S. BARTLETT.

Sherborne.

CASES REPORTED IN VOL. 97

24th October to 19th December, 1953

Lists covering all cases reported earlier this year appear in the Interim Index (to 27th June) and at p. 642, *ante* (4th July to 29th August)

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